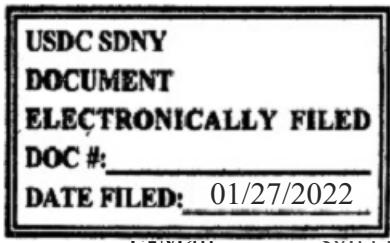


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January 25, 2022

Magistrate Judge Hon. Barbara Moses  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl St., Courtroom 20A  
New York, NY 10007-1312

Re: Case

Theodore Harper v. Railroad Construction Company, Inc.  
and National Railroad Passenger Corp.

Case No.  
Our File

19-CV-11864-PGG-BCM  
744.33712

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Dear Judge Moses,

This is a joint letter submitted pursuant to the memo endorsed Order dated November 12, 2021 downloaded as ECF Document No. 76.

This office represents defendants National Railroad Passenger Corporation (aka Amtrak) and Railroad Construction Company Inc. (hereinafter RCC).

We are pleased to report that with the exception of two (2) non-party depositions, discovery in this matter is substantially complete. Since the date of the last order, the parties have completed the depositions of Amtrak by Ino Lo; RCC by Project Superintendent Manny Sousa; former RCC Project Manager, Kevin Clark; and former RCC Mini Excavator Operator, Elly Walters

The two remaining non-party depositions include GCCOM foreman, Matthew Fitzer who was directing the unloading of the rebar cages and former Amtrak employee, John Ramos. As Mr. Fitzer has agreed to appear voluntarily, the parties have accommodated his schedule. His deposition is presently scheduled for February 10, 2022. With regard to former Amtrak employee, John Ramos, we had exchanged with plaintiff's counsel what we believed to be his last known address. This was furnished to us in spreadsheet form directly by Amtrak. However, when plaintiff's counsel attempted to serve him at an address in Maryland, Mr. Ramos told the process server that he was a train conductor out of Washington, D.C., and had never worked at Sunnyside Yards where the accident is claimed to have occurred. We have since checked back with Amtrak, through its Risk Manager, and she is investigating for us whether there is a second John Ramos who was assigned to Sunnyside Yards during the time period in question.

In addition to these several depositions, plaintiff submitted for an Independent Medical Examination with Dr. Andrew Bazos on January 20, 2022. Dr. Bazos is working on his report.

# **MEMO ENDORSED**

Magistrate Judge Hon. Barbara Moses  
Case No.: 19-CV-11864-PGG-BCM  
January 25, 2022  
Page 2

It is respectfully requested that the status conference scheduled for February 1, 2022, at 10:00 a.m. be allowed to take place virtually or that it be rescheduled to a date after the dates herein proposed.

Accordingly, it is respectfully requested that the following revised discovery schedule be adopted:

- No later than February 1, 2022, defendant Amtrak to advise whether it has an address for “John Ramos” other than that which has been previously exchanged;
- No later than February 10, 2022, the non-party deposition of Matt Fitzer shall be completed;
- No later than February 15, 2022, plaintiff shall serve a non-party subpoena on “John Ramos”.
- No later than February 28, 2022, the parties shall serve all outstanding post deposition demands.
- No later than March 15, 2022, the deposition of non-party witness, John Ramos shall be completed.
- No later than April 15, 2022, all remaining fact discovery shall be completed.

The parties have discussed whether a judicially supervised settlement conference would be productive and agree that such conference should be scheduled for a date following the completion of these last two non-party depositions.

The parties have consulted with respect to the foregoing and jointly consent to the terms of this status letter. The Court's valuable time and consideration to this request are graciously appreciated.

Respectfully submitted,

*Stewart B. Greenspan*

Rubin Fiorella Friedman & Mercante LLP

cc: Law Offices of Michael T. O'Leary, PLLC  
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Application GRANTED. No further extensions shall be granted. The status conference currently scheduled for February 1, 2022, is hereby ADJOURNED to **March 28, 2022, at 10:00 a.m.**, and will take place in Courtroom 20A of the Daniel Patrick Moynihan United States Courthouse. **No later than March 21, 2022**, the parties shall file a joint status letter, updating the Court on the progress of discovery and any outstanding disputes that may require judicial attention. SO ORDERED.



Barbara Moses, U.S.M.J.  
January 27, 2022